

D. W. PRICE.

JUNE 16, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RIXEY, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 917.]

The Committee on Claims, to whom was referred the bill (H. R. 917) for the relief of D. W. Price, submit the following report:

The facts in this case are substantially set forth in House Report No. 807, first session Forty-fourth Congress, as follows:

The Committee on Claims, to whom was referred the bill (H. R. 1464) for the relief of D. W. Price and Thomas Akers, having had the same under consideration, beg leave to make the following report:

On or about the 17th of July, 1867, the petitioners were the owners of 141 barrels of whisky, which were stored in the bonded warehouse of Cuthbert & Cunningham, in the city of Brooklyn, third revenue district of New York. Afterward, in the month of April, 1868, information was lodged with the district attorney for said district, alleging that said whisky was not under proper bond. One of said claimants, Mr. Akers, hearing thereof, went to John E. Risley, Deputy Commissioner of Internal Revenue, who, it appears from the proofs, introduced Akers to the Commissioner of Internal Revenue, Mr. Rollins, and thereupon both the Commissioner and the Deputy Commissioner informed said Akers that the collector had no right to seize said whisky, and that he need incur no expense of inspection for any such purpose; that the whisky being in bond, the Government was in no danger of losing the tax, and that the claimant ran no risk.

Relying upon this assurance, the claimant went off to the State of Ohio, where he learned, by indirection, that proceedings had been instituted in the eastern district of New York for the forfeiture of said whisky on the ground aforesaid; which proceedings were instituted on the 8th day of April, 1868, and an order of publication thereof was made returnable the 25th day of April, 1868. Immediately on the receipt of this information the claimant, on the 23d of April, 1868, wrote from Columbus, Ohio, to said Deputy Commissioner, reminding him of the assurances made to the claimant by said Deputy Commissioner and Commissioner. Thereafter the said Commissioner, on the 5th day of May, wrote to the collector of said district, directing him to discontinue the proceedings instituted for the forfeiture of said whisky. Before the receipt of this letter, however, judgment of forfeiture had been rendered and the property sold.

These 141 barrels of whisky belonged to one firm; and although the 141 barrels were libeled and proceeded against as one parcel and one case, and the order of publication stated the case to be "The United States against 141 barrels of whisky," yet on the return day of said writ the informer represented the case to the district attorney as being three parcels of whisky, belonging to three separate owners, and thereupon the action was changed to three suits, against 47 barrels of whisky in each case, and, without any further notice of this change of the cause of action and of the

parties, judgment thereon was rendered on the 27th of April, 1868, by which the fees and rewards of the informer were greatly enhanced. The proceeds of the sale of this whisky amounted to \$9,300, of which \$3,917.46 was consumed as fees of marshal, clerk, and informer, and the remainder, \$5,382.58, was paid into the Treasury of the United States. The alleged ground for this seizure and forfeiture was, as claimed by the Government officials, the insufficiency of the bond, although no such specific allegation appears in the information to have been lodged in the case.

The proofs submitted to the committee would seem to establish that the bond in this case was amply sufficient; and it further appears to have been both the policy and custom of the Internal Revenue Department not to insist upon a forfeiture of such property where the same was stored in a Government warehouse, for the reason that this custody of the property was the best security for the Government, while its enforced sale very frequently resulted in the loss of the Government tax. The petitioners claim the full amount realized on the sale of this whisky. It is true that this whisky was forfeited under a judicial proceeding, and it might be said that, constructively, the claimants had their day in court; but it does seem to your committee to be clear and just, upon every principle of law and equity, that where the Government itself, through its own accredited and authorized agents, informed the claimant, upon application, that he was in no danger, and assured him that the matter would be stopped, and he went off relying upon that assurance, and the Government, nevertheless, in violation of such assurance, proceeded summarily and hastily to seize and dispose of the whisky to the great detriment and injury of claimants, the Government should make restitution. That a court of equity would enforce such a rule of simple and plain justice between two citizens, there is no question. If a party by himself, or his authorized agent, mislead another to his injury, the party thus misleading will not be permitted to profit by his own bad faith or conduct. As the Government did not, however, receive the whole sum of \$9,300, for which the whisky sold, your committee, as a matter of equity and a fair adjustment of the case between the claimants and the Government, only recommend an allowance to the claimants of the sum of \$5,382.58, the amount actually covered into the Treasury, for which sum they report back a bill with a favorable recommendation.

Your committee beg leave to append the affidavit of D. W. Price and John W. Russell, from which it appears that Thomas P. Akers has transferred his interest in the within claim to D. W. Price.

This is to show that whereas the written evidence of the assignment made in 1875 to D. W. Price by Thomas P. Akers, of his undivided one-half interest in a certain claim the said Akers had against the United States Government for 141 barrels of whisky that was seized by the Government officials, in the State of New York, in the year 1868, has been either misplaced or lost, therefore we, D. W. Price and John W. Russell, do certify that the said transfer was made to D. W. Price in full payment of a debt due from said Akers to said Price.

In testimony whereof we hereby set our hands and seals this 16th day of March, 1878.

D. W. PRICE.

I certify the above is a true statement to the best of my knowledge and belief.

JNO. W. RUSSELL.

Subscribed and sworn to by John W. Russell before me this the 11th day of April, A. D. 1878. My commission expires July 11, 1881.

[SEAL.]

JOHN W. BOULWARE,
Notary Public, Marion County, Missouri.

In view of all the facts presented, your committee recommend that H. R. 917 be amended by striking out "nine thousand three hundred and four dollars" in lines 5 and 6, and inserting therein "three thousand nine hundred and seventeen dollars and forty-six cents," and that the bill, after being amended, do pass.